IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.12.2007

CORAM:

The Honourable Mr.Justice S.TAMILVANAN

A.S.No.925 of 1996

Kuppaiyandi
S/o Devara Chettiar,
Karipatti, Salem Taluk,
Salem District ... Defendant/Appellant

-vs-

Kanniammal
W/o Kuppaiyandi,
Oduvankurichi (Via)
Namagiripet,
Rasipuram Taluk,
Salem District. ... Plaintiff/Respondent

This appeal is filed under Section 96 of the C.P.C. against the judgment and decree dated 27.04.1993 in O.S.No.436 of 1992 on the file of Additional Subordinate Judge, Salem.

For Appellant : Mr.T.N.Ramesh
For Respondent : No Appearance

JUDGMENT

This appeal has been preferred against the judgment and decree dated 27.04.1993 made in O.S.No.436 of 1992 on the file of the Additional Subordinate Judge, Salem.

2. The unsuccessful defendant in the suit before the Trial Court is the appellant herein. The suit is filed by the respondent/plaintiff seeking present and future maintenance and further a sum of Rs,.50,000/- towards her medical expenses, against the appellant herein.

3.It is not in dispute that the appellant is the husband of the respondent herein. The respondent as plaintiff had filed the suit stating that after her marriage with the appellant they got five children and subsequently the appellant started to live with some other woman and due to which she filed a petition before the Judicial Magistrate, under Section 125 of Cr.P.C.; seeking maintenance.

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Accordingly, Rs.250/- was awarded as maintenance per month. Subsequently, by filling the suit, she had claimed Rs.1,000/- per month towards her maintenance, apart from Rs.3,000/- lumpsum for her use on the ground that she was not maintaining good health and also in need of treatment.

4.The appellant, as defendant, had admitted the marriage between himself and the respondent that had taken place in the year 1958 and also the birth of five children born out of the said wedlock. According to him, their first son was working in Postal and Telegram Department and another son was a mechanic.

5.However, the Trial Court has rightly held that the said reason would not be sufficient to reject the claim of the respondent/plaintiff in awarding maintenance. It is seen that the respondent herein was examined as P.W.1 apart from marking Exs.A1 and A2 and the appellant was examined as D.W.1. He had also produced supporting documents Exs.B1 to B9. As per the impugned judgment, the appellant has been directed to pay a sum of Rs.750/- per month to the respondent towards maintenance. The Trial Court has negatived the contention of the respondent, so far as it relates to claim of Rs.50,000/- towards medical expenses and Rs.90,000/- towards arrears of past maintenance, against which there is no cross appeal preferred by the respondent herein.

6.Therefore, the point for determination in this appeal is whether the maintenance awarded at Rs.750/-per month in favour of the respondent, by the Court is exorbitant and sustainable. It is not in dispute that the appellant defendant was working as foreman in the TamilNadu Electricity Board and he has also produced his salary certificate, Ex.B9. As per Ex.B9, the salary certificate, the appellant was drawing a sum of Rs.4,013/-as on 19.04.1993. Ex.B1 is the certificate copy of the order dated 28.08.1989 passed by the Judicial Magistrate, Rasipuram in M.C.No.2/99, wherein the respondent filed the petition for herself and for two of her minor children. Learned Judicial Magistrate by his order dated 28.08.1989 had directed the appellant to pay Rs.150/-per month to the respondent herein and Rs.100/-per month for the minor daughter, one of the petitioners therein. The claim of maintenance for second petitioner therein was negatived, since he had attained majority.

7.It is clear that the Trial Court considered the award of maintenance passed by the Judicial Magistrate in M.C.No.2 of 1989 and therefore it cannot be construed as exorbitant and unsustainable. It is seen that Trial Court has awarded maintenance considering the income of the appellant based on

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the oral and documentary evidence available on record and as such the same is sustainable in law. Further, Mr.T.N.Ramesh, learned counsel for the appellant had contended that though the respondent has claimed totally sum of Rs.71,000/- the trial Court had declined to grant a relief for a sum of Rs.59,000/- towards medical expenses and arrears of maintenance. The suit is originally filed as a pauper suit and therefore for the claim negatived by the Court below, the appellant need not pay the Court fee payable to the Government.

8.Considering the facts and circumstances, this Court is of the considered view that the appellant need not pay the Court fee payable for the claim which was negatived by the Trial Court. Further, the appellant is liable to pay maintenance as decided by the Court below at the rate of Rs.750/-per month with proportionate costs. The proportionate court fee payable to the Government shall also be paid by the appellant herein.

9.Accordingly, this appeal is ordered. However, in the appeal, the parties are directed to bear their own costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Smi

To,

1. The Additional Subordinate Judge, Salem.

2. The District Collector, Salem.

3.The Record Keeper, V.R.Section, High Court, Madras

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